

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 212

INTRODUCER: Criminal Justice Committee and Senator Oelrich

SUBJECT: Claims/Law Enforcement & Correctional Officers

DATE: March 10, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Fav/CS
2.	Gizzi	Yeatman	CA	Pre-meeting
3.			BI	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) provides that a law enforcement officer, correctional officer, or correctional probation officer who suffers from a specified medical condition loses the current presumption that the medical condition occurred in the line of duty for a workers' compensation claim, if he or she materially departs from the prescribed medical treatment for that condition. In addition, the CS states that for such cases, it creates a presumption that the disability or death was not caused by a condition incurred in the line of duty.

The CS also provides that the presumption that a disability was incurred in the line of duty is lost if the employee does not make a claim for benefits prior to leaving employment.

This CS substantially amends section 112.18 of the Florida Statutes.

II. Present Situation:

Under current law, when certain Special Risk Class employees become disabled or die from tuberculosis, heart disease, or hypertension; the death or disability is presumed to have occurred accidentally and in the line of duty. This presumption applies both to workers' compensation claims

under chapter 440 of the Florida Statutes and claims for disability retirement or death under the Florida Retirement System (FRS).

Special Risk Class

As of January 30, 2009, the Florida Retirement System (FRS) Pension Plan had 668,416 active members. Of these members, 75,640 (11.32%) were in the Special Risk Class.¹ The Special Risk Class includes employees who meet the eligibility requirements found in s. 121.0515, F.S., and who are employed by an FRS employer as a law enforcement officer, firefighter, correctional officer, correctional probation officer, emergency medical technician, paramedic, youth custody officer, or who are in a specified professional health care or forensic position and spend at least 75 percent of their time performing duties involving inmate contact for the Department of Corrections or patient contact for the Department of Children and Family Services.

The Special Risk Class was created for employees who must, as an essential function of the position, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. As persons in such positions age, they might not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their co-workers. Because of this, Special Risk Class members who are vested in the FRS receive more credit toward retirement for each year of service and are eligible to retire at an earlier age than Regular Class members.²

Florida Retirement System Disability Benefits

All FRS members are entitled to disability benefits if they become permanently and totally disabled from performing useful employment. The level of the benefit depends upon whether the injury or illness that caused the disability was incurred in the line of duty and the disabled member's membership class. Eligibility for disability benefits resulting from a disability that is not job related is the same for all membership classes: the member must have served at least eight years before becoming disabled, and the minimum benefit is 25 percent of the member's Average Final Compensation (AFC) at the time of disability retirement. On the other hand, there is no minimum time in service requirement to receive benefits for a disability that was incurred in the line of duty. However, the minimum in-line-of-duty disability benefit is 65 percent of the AFC for a Special Risk Class member and 42 percent of the AFC for a member of any other class.

In order to receive disability benefits, the member has the burden of proving that he or she is "totally and permanently disabled" and that the disabling injury or illness prevents him or her from "performing useful and efficient service as an officer or employee." Proof of disability must be certified by two Florida-licensed physicians.³

Florida Retirement System Death Benefits

Death benefits are available to certain survivors of FRS members. A death benefit equal to at least half of the member's last monthly salary is available for deaths incurred in the line of duty

¹ Department of Management Services *Senate Bill 212 Analysis*, at 1 (Feb. 5, 2010) (on file with the Senate Committee on Community Affairs).

² *Id.* (A Special Risk Class member can retire at the age of 55, or after 25 years of service, while a Regular Class member can retire at the age of 62, or after 30 years of service. A Special Risk Class member can earn retirement credits at 3% of the Average Final Compensation (AFC) for each year of service, while a Regular Class member earns retirement credits at 1.6-1.68% of AFC for each year of service.).

³ Section 121.091(4), F.S.

from the first day of employment. Death benefits for non-line-of-duty deaths are determined in a different manner and are dependent upon the length of service.⁴

In Line of Duty Determination

In most cases, in order to receive in-line-of-duty benefits for a disability there must be competent medical evidence documenting that the disability was caused by a job-related illness or accident.⁵ However, s. 112.18, F.S., provides a special presumption regarding the disability or death of a firefighter, law enforcement officer, or correctional officer that is caused by tuberculosis, heart disease, or hypertension. In such cases, it is presumed that the cause of the death or disability was accidental and that it was suffered in the line of duty unless the contrary is shown by competent evidence. This presumption is applicable to disability determinations under all public retirement systems, including the FRS and the Workers' Compensation Law.⁶

Under current law, the presumption in s. 112.18, F.S., can only be applied if the firefighter, law enforcement officer, correctional officer, or correctional probation officer passed a physical examination upon entering into service that did not reveal any evidence of tuberculosis, heart disease, or hypertension.⁷

The Department of Management Services applies the "in-line-of-duty" presumption to state correctional probation officers even though they are not specified in s. 112.18, F.S. This is based upon an interpretation that the Legislature intended to include correctional probation officers when the presumption was expanded to include "state law enforcement officers" in 1999.⁸ Two other factors support this interpretation: (1) although "correctional probation officer" is not explicitly mentioned, the language in s. 112.18, F.S., creating the presumption specifically refers to the subsection that defines the term, and (2) correctional probation officers are specifically included in s. 943.13(6), F.S., with reference to the lack of eligibility for the presumption, if the required physical examination prior to entering service reveals evidence of tuberculosis, heart disease, or hypertension.

Workers' Compensation

Any person or entity defined as an employer by ch. 440, F.S., including the state and its subdivisions, is required to provide workers' compensation coverage to its employees.⁹ An employer must pay compensation or furnish benefits to an employee who suffers an accidental

⁴ In addition to death benefits available for members, the survivors of certain members may also be entitled to additional death benefits based upon the member's employment position and the circumstances of his or her death.

⁵ See s. 121.091 (4)(c)3., F.S. (addressing FRS disability) and ss. 440.09 and 440.15, F.S. (addressing workers' compensation disability).

⁶ Sections 185.34 and 175.231, F.S., provide similar presumptions for both municipal police officers' and municipal firefighters' pension plans. Section 112.181, F.S., establishes a similar presumption for firefighters, paramedics, emergency medical technicians, law enforcement officers, and correctional officers who die or become disabled as a result of contracting hepatitis, meningococcal meningitis, or tuberculosis.

⁷ This requirement is established in s. 112.18, F.S., for firefighters and law enforcement officers (the Department of Management Services has also interpreted this statute to include correctional officers and state correctional probation officers). This requirement is also found in s. 943.13(6), F.S., which provides that the "in-line-of-duty" presumption located in s. 112.18, F.S., does not apply to law enforcement officers, correctional officers, or correctional probation officers, unless their required physical examination prior to entering service did not reveal any evidence of tuberculosis, heart disease, or hypertension.

⁸ Department of Management Services *Senate Bill 212 Analysis*, at 4 and 7 (Feb. 5, 2010) (on file with the Senate Committee on Community Affairs).

⁹ Sections 440.03 and 440.09, F.S.

compensable injury or death arising out of work performed in the course and the scope of employment.¹⁰ Unlike disability retirement under the FRS, an employee can receive workers' compensation disability benefits for partial or temporary disabilities.

III. Effect of Proposed Changes:

This CS provides criteria under which a law enforcement officer, correctional officer, or correctional probation officer, defined under s. 943.10, F.S., who suffers from tuberculosis, heart disease, or hypertension loses the current presumption that the condition was incurred in the line of duty for purposes of a claim for workers' compensation benefits. Satisfaction of the criteria would result in a presumption that the officer's condition was not incurred in the line of duty. This occurs for any workers' compensation claim filed under s. 112.18, F.S., or ch. 440, F.S., occurring on or after July 1, 2010, if:

- 1) The officer departed in a material fashion from his or her personal physician's prescribed course of treatment. "Prescribed course of treatment" is defined to mean prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician's medical records;
- 2) The departure from the prescribed course of treatment is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; and
- 3) An officer who has previously been compensated for tuberculosis, heart disease, or hypertension under s. 112.18, F.S., or ch. 440, F.S., (workers' compensation), and is reporting a new workers' compensation claim, departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the condition resulting in disability or increasing the disability or need for medical treatment.

The CS provides for independent medical examinations pursuant to s. 440.13 (5), F.S., in situations where there is a dispute as to the appropriateness of the course of treatment prescribed by a physician or an authorized physician for preexisting workers' compensation claims; or if there is a dispute as to whether a material departure from a prescribed course of treatment significantly aggravated the condition or resulted in disability, increasing disability, or need for medical treatment.

Although it is not specified in the CS, it appears that the employer would bear the burden of proving that the condition should be presumed not to have been incurred in the line of duty.

There is a significant difference between application of the current presumption and the contrary presumption in the CS. Under the current presumption, the employer can overturn the presumption that a qualifying condition was incurred in the line of duty by presenting competent evidence to the contrary.¹¹ However, the CS does not include a provision by which the employee can overcome the presumption to the contrary that is established in the CS.

¹⁰ Section 440.09 (1), F.S.

¹¹ Section 112.18 (1)(a), F.S.

In addition, the CS also provides that the employee loses the current in-line-of-duty presumption if a claim for benefits is not made prior to leaving employment.

This CS shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Management Services states that the CS complies with Article X, s. 14 of the State Constitution, and Part VII, of ch. 112, F.S., which require public retirement benefits to be funded on a sound actuarial basis.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In general, the CS would have a negative financial impact on employees whose actions result in loss of the current presumption by either failing to follow a prescribed course of treatment or failing to file a claim before leaving employment. It can also be expected to generate litigation over whether an employee's actions result in loss of the presumption. However, these effects are not quantifiable, and the Department of Financial Services assesses that the impact of the CS on the private sector is unknown.¹³

C. Government Sector Impact:

The Division of Risk Management within the Department of Financial Services indicates that this CS would have a minimal positive impact on the government sector by reducing program claim costs by an estimated \$150,000 per year. The department estimated that

¹² Department of Management Services *Senate Bill 212 Analysis*, at 8 (Feb. 5, 2010) (on file with the Senate Committee on Community Affairs).

¹³ Department of Financial Services, *Senate Bill 212 Analysis* (Jan. 13, 2010) (on file with the Senate Committee on Community Affairs).

less than five percent of the 832 claims paid by the Workers' Compensation program since January 1, 2006, as a result of the current presumption would not have been compensable under the provisions of this CS.¹⁴

VI. Technical Deficiencies:

Lines 82-85 of the CS provide that an employee loses the current line-of-duty presumption if a claim for benefits is not made prior to leaving employment. It appears that this paragraph is intended to apply only to workers' compensation claims, but it can also be interpreted to apply to FRS disability retirement claims as well. If so interpreted, there is also ambiguity as to whether filing a workers' compensation claim before leaving employment would satisfy this requirement for an FRS disability retirement claim that is filed after leaving employment.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice Committee on March 4, 2010:

Clarifies that the new presumption in paragraph (b) 1, lines 41-66, of the CS providing that a condition was not incurred in the line of duty, only applies to workers' compensation claims under ch. 440, F.S.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁴ *Id.*